IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

S.T.Rev.No.140 of 2004

A.I.T.A.NO.86 OF 1997 OF THE KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH-I, ERNAKULAM (ORDER DATED 25.09.2002).

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PETITIONER:-

THE TRAVANCORE RUBBER & TEA CO.LTD.,
PATTOM PALACE P.O.,
TRIVANDRUM - 695 004,
REPRSENTED BY ITS DIRECTOR
MR.S.RAMAKRISHNA SARMA.

BY ADV. SRI.JOSEPH MARKOS
SRI.THOMAS VELLAPPALLY

RESPONDENT:-

STATE OF KERALA,
REPRESENTED BY THE SECRETARY (TAXES),
TRIVANDRUM.

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 23/10/2007, ALONG WITH O.T.C.NO.17 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

S.T.Rev.No.140 of 2004 &
O.T.C.No.17 of 2006

Dated, this the 23rd day of October, 2007

ORDER

H.L.Dattu, C.J.

In S.T.Rev.No.140 of 2004, the assessee questions the levy of interest under Section 37(4) of the Kerala Agricultural Income Tax Act, 1991 ("Act" for short) by the assessing authority and confirmed by the first appellate authority and the Tribunal.

(2) In O.T.C.No.17 of 2006, the assessee calls in question the correctness or otherwise of the orders passed by the assessing authority in levying penalty under Section 37(5) of the Act.

(3) Section 37 of the Act provides for self assessment and payment of advance tax. Under sub-section (4) of Section 37 of the Act, if any person fails to pay tax in accordance with Section 37 of the Act or in accordance with the demand notice issued under Section 45 of the Act, he shall pay a simple interest at the rate of fifteen per cent per annum for every month of delay or part thereof, on the unpaid balance tax. Sub-section (5) of Section 37 of the Act provides for levy of penalty, if for any reason a person fails to pay the tax or any part thereof in accordance with sub-section (1) or sub-section (2) or fails to pay the tax in accordance with sub-section (3) before the due date fixed for filing of the return. Provisos appended to sub-sections (4) and (5) of Section 37 of the Act gives a statutory right to the assessee to file a petition/application before the Commissioner of Agricultural Income Tax to reduce or waive the interest as well as penalty, if he is satisfied that there was sufficient reason for non-payment of tax in time or for the delay in payment of tax respectively.

(4) In our opinion, if we permit the assessee to make an application/petition before the Commissioner of Agricultural Income Tax for waiver of the interest as well as waiver of penalty under sub-sections (4) and (5) of Section 37 of the Act, it may not cause any prejudice to the respondent.

(5) In view of the above, without going into the other details of the case, we dispose of these revision petitions. We grant liberty to the petitioner to make an appropriate application/petition before the Commissioner of Agricultural Income Tax for waiver/to reduce the levy of interest and penalty imposed by the assessing authority for the assessment year 1993-94 within a month's time from today. If such an application/petition is filed, the authority will consider the same in accordance with law within two months from the date of filing of the application/petition, without being influenced by the orders passed by the first appellate authority or the Tribunal. This order of ours need not be treated as a precedent in any other case.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-